

§ 31.3402(i)-2

1981. Any such agreement shall remain in effect in accordance with paragraph (a). See § 31.3402 (i)-2 for rules relating to increases in withholding after September 30, 1981.

(Secs. 3402(i) and (m) and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 3402 (i) and (m), 95 Stat. 172, 184; 26 U.S.C. 7805, 68A Stat. 917))

[T.D. 6516, 25 FR 13108, Dec. 20, 1960, as amended by T.D. 7065, 35 FR 16540, Oct. 23, 1970; T.D. 7915, 48 FR 44074, Sept. 27, 1983]

§ 31.3402(i)-2 Increases or decreases in withholding.

(a) *Increases in withholding*—(1) *In general.* In addition to the tax required to be deducted and withheld in accordance with the provisions of section 3402, the employee may request, after September 30, 1981, that the employer deduct and withhold an additional amount from the employee's wages. The employer must comply with the employee's request, except that the employer shall comply with the employee's request only to the extent that the amount that the employee requests to be deducted and withheld under this section does not exceed the amount that remains after the employer has deducted and withheld all amounts otherwise required to be deducted and withheld by Federal law (other than by section 3402(i) and this section), State law, and local law (other than by State or local law that provides for voluntary withholding). The employer must comply with the employee's request in accordance with the time limitations of § 31.3402(f)(3)-1 (relating to when withholding exemption certificate takes effect). The employee must make his request on Form W-4 as provided in § 31.3402(f)(5)-1 (relating to form and contents of withholding exemption certificates), and this Form W-4 shall take effect and remain effective in accordance with section 3402(f) and the regulations thereunder.

(2) *Amount deducted considered to be tax.* The amount deducted and withheld pursuant to paragraph (a)(1) of this section shall be considered to be tax required to be deducted and withheld under section 3402. All provisions of law and regulations applicable with respect to the tax required to be de-

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ducted and withheld under section 3402 shall be applicable with respect to any amount deducted and withheld under paragraph (a)(1) of this section.

(b) *Decreases in withholding.* [Reserved]

(Secs. 3402(i) and (m) and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 3402 (i) and (m), 95 Stat. 172, 184; 26 U.S.C. 7805, 68A Stat. 917))

[T.D. 7915, 48 FR 44074, Sept. 27, 1983]

§ 31.3402(j)-1 Remuneration other than in cash for service performed by retail commission salesman.

(a) *In general.* (1) An employer, in computing the amount to be deducted and withheld as tax in accordance with section 3402, may, at his election, disregard any wages paid, after August 9, 1955, in a medium other than cash for services performed for him by an employee if (i) the noncash remuneration is paid for services performed by the employee as a retail commission salesman and (ii) the employer ordinarily pays the employee remuneration solely by way of cash commissions for services performed by him as a retail commission salesman.

(2) Section 3402(j) and this section are not applicable with respect to noncash wages paid to a retail commission salesman for services performed by him in a capacity other than as such a salesman. Such sections are not applicable with respect to noncash wages paid by an employer to an employee for services performed as a retail commission salesman if the employer ordinarily pays the employee remuneration other than by way of cash commissions for such services. Thus, noncash remuneration may not be disregarded in computing the amount to be deducted and withheld in a case where the employee, for services performed as a retail commission salesman, is paid both a salary and cash commissions on sales, or is ordinarily paid in something other than cash (stocks, bonds, or other forms of property) notwithstanding that the amount of remuneration paid to the employee is measured by sales.

(b) *Retail commission salesman.* For purposes of section 3402(j) and this section, the term "retail commission salesman" includes an employee who is